



Business, Transportation and
Housing Agency

Workers' Compensation and Disability Retirement within the CHP



M. L. Brown, Commissioner
Revised February 9, 2005

Department of California Highway Patrol

Report to
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Executive Summary

In September and October 2004, media coverage highlighted several recently retired California Highway Patrol (CHP) executives, each of whom retired on disability. The nature of their disability claims, and in some instances, the nature of their subsequent employment after leaving the CHP, raised questions about their disability claims and the appropriateness of a disability retirement.

While the implications left by this coverage raised important concerns, they must be separated from the many claims filed by employees who suffer legitimate life-altering injuries and who are reluctantly forced to leave a career they love. Still, the subject matter and the case examples cited in these articles demanded action by the Department.

The financial impact of workers' compensation cost to the Department is significant; it approximates \$67.8 million per year¹. Moreover, beyond the financial burden, injuries take our employees off the road, which ultimately can affect our ability to provide safety and service to the public. (*Revised February 2005.*)

The State's workers' compensation and disability retirement systems are highly regulated. For example, the State's workers' compensation system is directed by laws contained in the Labor Code and precedent-setting case decisions by the Workers' Compensation Appeals Board (WCAB). Additionally, the State's disability retirement system is directed by the Public Employees' Retirement Law. Specified laws in both systems determine an injured employee's entitlement to benefit payments.

¹ It is important to note that the death benefits that employees' dependents receive can be a significant contributor to the CHP's total annual workers' compensation expenditures. While death benefits are difficult to quantify at any given point in time, the Department will attempt to identify these costs in the near future.



Despite significant reforms since its implementation, the basic principle of the workers' compensation system has remained the same: employers provide protection for work-related injuries as a cost of doing business, and benefits are afforded, within defined limits, regardless of the fault of any person or entity (the so-called "No Fault" system). In turn, employers are provided with protection against negligence suits based on industrial injuries.

The CHP's role in the workers' compensation and disability retirement processes involves active participation by all managers and supervisors in managing injury and illness claims. The Department strives to demonstrate a nexus between the claimed injury and the job. We also have an investigative role in those cases where there may be some suspicion about the truthfulness of a claim. It is important to note, however, that *the CHP has no authority to make determinations on the injured employee's eligibility for workers' compensation or disability retirement benefits*. Instead, the Department's principle role in these processes is to ensure proper and timely reporting of all injury claims, that necessary medical treatment is provided, and that compensation payments are made to eligible employees.

The CHP has detailed policies and procedures in place that, in combination with State law, direct the Department's participation in the workers' compensation and disability retirement processes. Although the CHP's role involves active participation by managers and supervisors in managing injury and illness claims, the final resolution of an injury claim is determined by the workers' compensation adjusting agent, the State Compensation Insurance Fund (SCIF), the WCAB, and the California Public Employees Retirement System (CalPERS), respectively.

Costs and Trends

To obtain an understanding of the impact of workers' compensation costs, we examined current costs and trends. The CHP has experienced significant



increases in its total workers' compensation costs over the past years. In fiscal year 1995/96, the CHP paid a total of \$36,222,283 (or 7.68 percent of its payroll) in workers' compensation costs. In fiscal year 2003/04, the CHP's workers' compensation costs increased to a total of \$67,804,243 (or 9.97 percent of its total payroll). The rise in costs can be attributed, in large part, to skyrocketing medical costs, inflation, litigation, SCIF case management fees, and an expansion of the types of injuries that are considered to be "presumptive." (*Revised February 2005.*)

The concern over workers' compensation is not new to this Department. Over the years, the Department has been involved with several ambitious efforts to address this multi-faceted issue, with differing levels of success.

In 1992, a comprehensive audit of the Department's management of workers' compensation claims and disability retirements was conducted. As a result of the audit, several legislative recommendations were proposed to improve the system and discourage fraudulent industrial disability retirements (IDRs). However, none of the recommendations were adopted by the Legislature. Then, on March 16, 1996, Commissioner D. O. Helmick testified before a Senate budget subcommittee and provided four legislative proposals related to curbing workers' compensation abuse. Again, none of the proposals were adopted by the Legislature (see Annex C in the full report).

Review and Findings

With a newly appointed Commissioner, the Department made a commitment to delve into the Department's workers' compensation and disability retirement systems and produce a report describing the Department's findings. Upon taking office, CHP senior staff (the Commissioner, Deputy Chiefs, Assistant Chiefs, Assistant Commissioners, and Deputy Commissioner) immediately re-established and expanded the CHP's Workers' Compensation Fraud Unit (WCFU).



Additionally, on September 18, 2004, an ad hoc workers' compensation fraud audit task force was formed to evaluate all cases from January 1, 2000, through June 30, 2004, in which an IDR was granted to a uniformed member of the Department. The task force identified 603 cases that were covered by this time period.

Three categories were established that allowed each case to be evaluated by a standardized and consistent set of factors that have historically been indicators of potential fraud. The categories are as follows:

- Category I: Employees facing disciplinary action at the time of the IDR; multiple claims filed within a 30-day period; the mechanism of injury was inconsistent with the claimed severity; relation of injury to job is unclear; there are discrepancies in how employee filed claim; or, the claim marked "Questionable" by employee's commander.
(Note: "presumptive injuries" were not excluded from this category if other indicators of possible abuse were present.)
- Category II: No witnesses to the injury; the injury was reported late or the reporting employee was 48 years old or older; cumulative injuries, the employee's assignment, and the type of injury were inconsistent; details of the injury as provided by the employee were vague or unverifiable; or, there appear to be violations of HPM 10.7 procedures for handling claims.
- Category III: The injury was substantiated by a doctor and considered presumptive by law (except back injuries), or the injury was obviously valid (severe head injury, missing extremity, death, etc.).



The task force's findings cover several areas, including: an overview of IDRs by rank and other demographic criteria; identified cases that will be forwarded to CalPERS for additional review; identified cases that will be reopened and investigated by the Department; and a large quantity of statistical data to give an overall perspective of the current workers' compensation situation within the Department.

A total of 35 cases have been identified as requiring further direct investigation. Of these, 15 cases have indicators of potential abuse and are being investigated further, some of which could result in the Department seeking criminal prosecution. Since these are potentially active criminal investigations, no additional identifying information regarding these cases will be presented within this report.

The remaining 20 cases are being forwarded to CalPERS, accompanied by the analysis of each case detailing what fraud indicators were uncovered. The transfer was necessary because CalPERS has been reluctant to permit departmental investigators to examine case files due to legal and privacy issues, which the Department is attempting to resolve.

Actions Taken

- We have reinstituted the WCFU that will report directly to the Commissioner's Office. All CHP 121 forms (Report of Employee Injury/Illness) will be forwarded to this unit by local commanders for investigation and possible prosecution whenever indicators of possible fraud exist. The unit will work closely with Disability and Retirement Section (DRS), SCIF, CalPERS, and local district attorneys to improve anti-fraud policies, procedures, and training, and will prepare cases for prosecution.



- We have placed a renewed emphasis on making injury and illness case management a command “top” priority. To help accomplish this, DRS staff will provide training to Division and command staff responsible for case management.
- We have realigned the responsibilities of DRS. Over recent years, the DRS role has changed from a liaison between the Department, SCIF, and CalPERS to one of an employee advocate. With the recent workers’ compensation laws, DRS can now become more of an advocate to protect the fiscal integrity of the CHP, while still ensuring that appropriate benefits are provided to our employees.
- The WCFU, in conjunction with DRS, have been asked to develop procedures to review and track mandatory reinstatement requests for indicators of fraud.
- The Department has begun an audit to assess the current accuracy of SCIF’s billing process.
- Workers’ compensation case management strategies will be included in the CHP’s 2005 Strategic Plan.
- DRS personnel will begin attending Division Area Commanders Conferences in 2005 to provide training and present information on significant workers’ compensation cases.
- The Department will invite other involved agencies to participate on a committee to explore a wide range of solutions to the workers’ compensation and disability retirement problems.



Recommended Actions

There are a number of recommendations which could serve to prevent and manage employee injuries, while reducing associated costs. In order to implement long-term solutions and modifications to the complex workers' compensation program, logistical assessments must be a consideration prior to moving forward. The Department, in the months ahead, will continue to implement and evaluate the following internal recommendations, taking into consideration issues such as Memoranda of Understanding, bargaining unit contracts, and critical public safety tasks. Also, in developing the following recommendations, the Department considered the efforts and recommendations contained in the recently released *California Performance Review* (see Annex I in the full report).

Internal CHP Actions

1. Limited Duty Assignments. The use of limited duty assignments (with an appropriate medical release) for specified employees pending IDR is being reviewed for possible expansion. Often employees file for IDR while on paid medical leave (4800.5 time)². Bringing these employees back to work and placing them on limited duty status would stop their entitlement to 4800.5 benefits, thereby reducing departmental costs for tax free disability payments. Then, once the employee's IDR is approved by CalPERS, the employee could be separated from the organization, bringing about additional savings to the Department in reduced 4800.5 benefit costs. We would also explore and implement a policy to articulate which assignments employees on limited duty could perform.

² This refers to California Labor Code Section 4800.5, which provides full salary, tax free, for up to one year to CHP uniformed employees who are *temporarily* disabled as a result of an industrial injury.

2. Internal Approval Authority. The Department is evaluating its internal authority process for the settlement of workers' compensation claims. This lengthy internal process can cause problems with meeting the 10-business day approval requirement imposed by the State's Master Agreement.
3. Policy Compliance. Emphasis has begun, and will continue, for strict compliance and enforcement of departmental policies relative to completion of required injury documentation, and specifically the CHP 121D, Injury/Illness Status Report. Further, existing policy is being revised to require monthly reporting of injury status by commanders of their employees, inclusive of months when no employee is on injury status, otherwise known as "negative reports."
4. Consistent and Timely Division Review of Area Case Management Practices. The Commissioner's Office currently provides "Quarterly Reports of Open Workers' Claims" to each Division commander for their respective commands. The Department will now provide these reports on a monthly basis to improve management review and follow up. Further, a standard Division review protocol is being developed to ensure that local commands use their report to actively review injury claims on a monthly basis. Finally, this new process will include a comparison between the CHP 121D and the new monthly report of open injury claims to ensure compliance with case management policies.
5. Legal Counsel Position. The Department will explore the feasibility of a budget change proposal seeking a legal counsel position, designated as an expert in, and solely dedicated to, departmental cases related to workers' compensation, retirement, recruitment, and equal opportunity. Such a position would provide immediate access to, and timely review of workers' compensation matters that may be outside the technical expertise of current DRS staff.



6. DRS Database. A modified DRS database must be developed to include additional statistical information about workers' compensation claims and IDRs. Such a database should be easily navigable and include information which could serve as indicators of potential fraud. The database recently developed by the workers' compensation audit task force will be used as a starting point in the development of this new database. Information contained in these files will also be accessible to field commands upon request.
7. Workers' Compensation Fraud Unit Database. A more expansive, confidential database should also be created for the exclusive use of the Workers' Compensation Fraud Unit. This database will be utilized to conduct trend analyses, and to track fraud investigation cases from initial investigation to prosecution and/or adverse action.
8. Policy. Policy will be developed to provide further guidance for processing of "questionable" injury claims. Specifically, a policy will be provided on handling of claims that appear to be fraudulent.
9. Tipline/Website. The Department will explore the feasibility of establishing a toll free workers' compensation fraud reporting hotline for suspected criminal activity by workers' compensation claimants and/or disability retirees. The website could be utilized by both departmental employees and the public.
10. 14 Critical Tasks. The Department will re-evaluate the 14 critical tasks (otherwise known as "performance measures") required of all uniformed employees and make recommendations to the Commissioner as appropriate (see Annex J in the full report for a copy of these tasks).
11. Self Administration. The Department will explore the feasibility of administering its own workers' compensation claims, or replacing SCIF



with a private insurer. Such an evaluation will explore means of reducing current multi-million dollar annual costs for open injury claims. This recommendation would follow an assessment of recently enacted workers' compensation law. The threshold for this evaluation will be what is in the best interest of the state and taxpayers who fund workers' compensation costs. If this proposal is adopted, additional in-house legal counsel would be required.

12. Occupational Safety. The Department will task its Occupational Safety Committee to explore and recommend new workplace safety programs with a goal of substantially reducing injuries to employees and reducing associated costs.
13. Departmental Awareness Campaign. An in-house awareness campaign will be developed which emphasizes integrity and honesty relative to injury and workers' compensation claims. Awareness tools will include a means to express departmental values and expectations of employees with respect to this subject, the positive aspects of service retirement, the importance of proper case management, training of all employees, and wide dissemination of any departmental employee fraud cases.
14. Reclassifying Injured Employees. The Department is exploring the feasibility of reclassifying the duty position of permanently injured uniformed employees, with the intent of returning the employee to duty in a vacant non-peace officer role.
15. Special Handling of Retirements. The Department is developing policy to make clear that an employee's retirement eligibility shall not be considered when an adverse action, or separation due to injury, is being considered by the Department.



16. Amendment to HPM 10.2, *Internal Investigations*. Under the Peace Officers' Bill of Rights, the Department generally has one year to take final administrative action against a uniformed employee for acts of misconduct. The Government Code provides specified exceptions to this one-year period for complex investigations, workers' compensation fraud, and other criminal cases. For example, it extends the period to take adverse action against an employee to within three years of learning of the misconduct. The practical effect of the time limit is that the Department will likely be precluded from taking adverse action against an employee who retires before adverse action is taken, then reinstates several years later after the statute of limitations passes relative to "final administrative action." Although this happens infrequently, it nevertheless is a loophole in the system.

The Department's Internal Affairs Section will address the issue described above by developing policy to allow the retention of internal investigations in specific circumstances for longer than the standard five year retention period currently allowed. The period of retention should be commensurate with the employee's eligibility to return to state service and would be approved by the Office of the Commissioner. (*Revised February 2005.*)

Actions External to CHP

Although the following recommendations appear beneficial, they are beyond the Department's purview and may require legislative amendments in order to enact the strategies which would reduce the cost associated with workers' compensation claims.



1. Amend Labor Code 4658.6. Amend Labor Code Section 4658.6 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury/disability. (This recommendation is specific to CHP IDRs and was part of the CHP's recommended legislative changes in March 1996.)
(Revised February 2005.)
2. Earnings Offset. Establish an earnings offset for IDR retirees employed outside CalPERS in an occupation requiring peace officer status, by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement (similar to Government Code Section 21300). (This recommendation is specific to the CHP and was part of the CHP's recommended legislative changes in March 1996.)
3. Presumptive Injuries. There must be a review of Labor Code Sections 3212 through 3213 to determine if the current list of presumptive injuries is tied to specific job-related injuries. An employee should not, for example, automatically qualify for a "presumption based" IDR if the medical review determines that the particular injury was unrelated to the employee's specific job duties. (This recommendation is specific to the CHP.)
4. Medical Evaluations. With respect to CalPERS, after an IDR is approved CalPERS has the responsibility to periodically review the current status of retirees. To accomplish this, CalPERS should periodically have independent medical evaluators re-evaluate, in a standardized format, the disability status of employees who are less than 50 years of age, which is the CHP's eligibility age for service retirement. This could initially be done on a trial basis to determine if this process is beneficial in identifying



disability retired employees whose medical status later improves to the point that they may be able to return to their CHP employment.

5. Amend Penal Code Section 1543(d): Penal Code Section 1543(d) should be amended to grant the CHP access to relevant medical records associated with workers' compensation and disability retirement cases that both SCIF and CalPERS have access to. (*Revised February 2005.*)

Conclusions

The review of workers' compensation claims and IDR cases has yielded a list of problem areas that need to be addressed, both by the CHP and by others involved with these issues. To correct these discrepancies, a list of action steps has already been implemented. In addition, recommendations have been provided that apply both to the CHP and to the workers' compensation and IDR systems as a whole (which would have to be addressed by the Administration, Legislature, and other stakeholders).

As reflected in this report, we have taken an honest look at the numbers of industrial disability retirements; we have identified those that might be worthy of more detailed review; we have identified those that might be worthy of prosecution for fraud; and we have established a permanent workers' compensation fraud unit that will continue this initial phase of investigation and be ready to undertake a vigorous new investigative role for any new cases that may arise.

